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Fluidigm Corporation and Fluidigm Canada Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FLUIDIGM CORPORATION, a Delaware
corporation; and FLUIDIGM CANADA INC.,
a foreign corporation,

Plaintiffs,

v.

IONPATH, INC., a Delaware corporation,

Defendant.

Case No. 3:19-cv-05639-WHA

**FLUIDIGM CORPORATION AND
FLUIDIGM CANADA, INC.'S NOTICE
OF PARTIAL WITHDRAWAL OF
THEIR MOTION TO MODIFY
SCHEDULING ORDER AND FOR
LEAVE TO FILE THIRD AMENDED
COMPLAINT (DE 134)**

Pursuant to Civil Local Rule 7-7(e), Plaintiffs Fluidigm Corporation and Fluidigm Canada Inc. (collectively “Fluidigm”) submit this Notice of Partial Withdrawal as to portions of Fluidigm’s Motion to Modify Scheduling Order and for Leave to File Third Amended Complaint (the “Motion to Amend,” DE 134).

After undertaking further investigation, Fluidigm withdraws its Motion to Amend to the extent it seeks to add a claim for breach of contract. As a result, Fluidigm specifically withdraws the following portions of its Motion to Amend:

Page(s)/Line(s)	Portion
Page 1, lines 23-28	“(1) breach of contract ...” to “...third parties, and (2)”
Page 2, line 13	“breach of contract and”
Page 2, lines 14-15	“IONpath purchased ...” to “... the Fluidigm Ts&Cs”
Page 2, line 20	“also”
Page 4, line 18	“Both of”
Page 4, line 20 through Page 5 line 1	“In purchasing ...” to “... Proposed Compl., ¶¶ 66-67].”
Page 5, footnote 4	[entire footnote]
Page 5, lines 5-7	“In other words ...” to “... services to BMS.”
Page 5, line 8	“also”
Page 9, line 25	“two”
Page 11, line 4	“IONpath’s breach of Fluidigm’s Ts&Cs and”
Page 11, line 19	“breach of contract and”
Page 11, line 23 through Page 12, line 12	““The elements of ...” to “... from Fluidigm. [<i>Id.</i> at ¶¶ 132-133].”

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Additionally, Fluidigm withdraws material from the following paragraphs from its [Proposed] Third Amended Complaint (DE 134-3):

Paragraphs	Portion
Paragraph 1	“, and breach of contract”
Paragraph 10	“, and breach of contract”
Paragraph 14	“and breach of contract”
Paragraph 16	“, and breach of contract”
Paragraph 66	“, and specifically incorporated ...” to “... subject to the 1st Ts&Cs”
Paragraph 68	“, in violation of the terms of the 1st Ts&Cs.”
Count 1 ¹ spanning Paragraphs 126-134	[entire paragraphs]
Prayer for Relief ¶ K	[entire paragraph]

Attached as Exhibit 1 to the Declaration of K. Lee Marshall in support of this Notice of Partial Withdrawal (“Marshall Decl.”) is a revised copy of the [Proposed] Third Amended Complaint for Patent Infringement and Intentional Interference with Contractual Relations with the above-identified portions removed. Attached as Exhibit 2 to the Marshall Decl. is a redline showing the changes from the [Proposed] Third Amended Complaint as-filed to Exhibit 1.

Dated: September 11, 2020

Nick Williamson
BRYAN CAVE LEIGHTON PAISNER LLP

By: /s/ Nick Williamson
Nick Williamson

*Attorneys for Fluidigm Corporation
and Fluidigm Canada Inc.*

¹ As Fluidigm is withdrawing various paragraphs and its Proposed Count 1, it has also renumbered the remaining paragraphs and Counts as appropriate.

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2020, I electronically filed the above document with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to all registered counsel.

/s/ Nick Williamson

Nick Williamson

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